IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.03.2007

Coram:

The Honourable Mr.Justice J.A.K.SAMPATH KUMAR

A.S.No.573 of 1991

N.M.Gopinath .. Appellant/Plaintiff

..vs..

1.C.Sreelatha
2.S.Santhi
3.A.Srinivasalu Chetty
4.V.Ramachandran
5.Anderson Memorial College Church .. Respondents/Defendants

Appeal is filed against the Judgment and decree dated 15.9.1989 made in O.S.No.4562 of 1983 on the file of the II Assistant Judge, City Civil Court, Madras.

For Appellant : Mr.S.V.Jayaraman, Senior Counsel,
for Mr.M.Aravind Subramanian

For Respondents 1 to 4 : Mr.S.Subbiah

For 5th Respondent : No appearance

JUDGMENT

This appeal is filed against the Judgment and decree dated 15.9.1989 made in O.S.No.4562 of 1983 on the file of the II Assistant Judge, City Civil Court, Madras, in and by which the learned Sub Judge after analyzing the evidence in depth decreed the suit in part while dismissing the suit in other aspect.

2. For convenience, the parties are referred as arrayed in the suit.

3. The plaintiff states as follows:

The plaintiff had been carrying on business at Old Door No.376, New No.230, N.S.C.Bose Road, Madras-1 in the name and style of M/s.Gopinaths dealing in supply and sale of machines as the Sole Proprietor of the concern. The business was started by him as early as August, 1947.

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4. On 3.10.1980 the defendants 1, 2 and 3 entered into a partnership with him to carry on business in the supply and sale of medicine and drugs in the name and style of M/s.Gopinaths at Old Door No.376, New Door No.230, N.S.C.Bose Road, Madras-1 under the terms embodied in the deed of partnership dated 3.10.80 commencing from 11.9.1980.

5. As per clause 5 and 8 of the partnership deed, the defendants 1 to 3 had agreed to pay him a sum of Rs.400/- as and for his share of the profits. Under clause 15 of the partnership deed, the defendants 1 to 3 had also agreed to pay the plaintiff the enhanced land rent demanded by the Lessors of the land viz., the Anderson Memorial College Church i.e. Rs.60/- from June 1980 onwards and the aforesaid amounts are payable by them to the plaintiff every month. They paid the plaintiff the amounts due under the above heads only upto November 1982. Thereafter, the defendants 1 to 3 had defaulted in making the above mentioned payments in spite of repeated demands made by the plaintiff and have thus committed breach of the conditions contained in the agreement.

6. The partnership business for the supply and sale of medicines and drugs is strictly governed by the provisions of the Drugs and Cosmetics Act, 1940 as subsequently amended and the rules framed thereunder. Mr.Sankaragupta, the husband of the first defendant and Mr.V.Ramachandran, the fourth defendant herein who is the father-in-law of the second and third defendants are in the premises conducting the business of the sale of the medicine and drugs on behalf of the defendants. Among the partners the plaintiff is the only qualified person under the Drugs and Cosmetics Act. On many occasions in the absence of Mr.Sankaragupta, the fourth defendant Mr.V.Ramachandran, an unqualified person referred to above, has been found selling medicines, thus violating Rule 65 of the Drugs and Cosmetics Rule 1945 and thereby exposing the entire partnership not only to the cancellation of the Licence granted under the Drugs and Cosmetics Act, but also to prosecution thereunder including the plaintiff. Although, the plaintiff had warned Mr.Ramachandran against the above statutory violation, it had no effect on him. Mr.Ramachandran's reaction to the protest of the plaintiff had been insolent, rude and discourteous behaviour which the plaintiff submits is totally unjustified.

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7. The plaintiff has every reason to suspect that Mr.Shankaragupta who is acting on behalf of the defendants 1 to 3 has been selling drugs without obtaining proper invoice from the distributors which is in violation of the rules and rules of the Drugs and Cosmetics Act.

8. The plaintiff had not received the payment due from the defendants 1 to 3 under the partnership Deed, he had caused a Registered Legal Notice dated 14.3.1983 to be issued to them calling upon them to

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make the payment and also continue to make the payments regularly as required under the terms of the partnership Deed and it was also clearly pointed out that the conduct of Mr.Sankaragupta and V.Ramachandran acting on behalf of the defendants 1 to 3 was likely to prejudically effect the carrying on of the partnership business.

Hence, the suit.

9. The written statement of the first defendant was adopted by the defendants 2 to 4, reads as follows:

The plaintiff and the defendants 1 to 3 entered into a partnership on 3.10.1980. There cannot be any doubt whatsoever that the partnership business for the supply and sale of medicines and drugs is governed by the provisions of Indian Drugs and Cosmetics Act 1940 as subsequently amended and the rules framed thereunder. However, there cannot be any act preventing this defendant's husband and the father-in-law of the defendants 2 and 3 to remain in the business premises and also to carry on other business activities. There is nothing in law preventing any of the employees or the relatives of any one or more of the partners to remain in the business place and also to carry on the same. The business is also attended by a qualified employee Sankaraguptha, husband of this defendant and so there cannot be any violation of any of the provisions contained under Indian Drugs and Cosmetics Act, 1940 or any of the rules framed thereunder. It may be that the plaintiff is a qualified person among the partners. But the same cannot disqualify other partners from carrying on any business by themselves with the employment of a qualified person prescribed under the Acts and Rules.

10. The plaintiff was carrying on the business in the building bearing Door No.230, N.S.C. Bose Road, Madras-600 001. But for want of proper and efficient administration and also dearth of capital and working capital, the plaintiff was not able to carry on with his business. At one point of time, the shop was in a position to be closed down and at that state, the defendants 1 to 3 approached the plaintiff with a request to sell the business to the defendants 1 to 3 so that they can carry on the business by themselves. The plaintiff then informed the defendants 1 to 3 that the land on which the building was put up, belongs to Anderson Church and that the superstructure over the land was put up by the plaintiff and that in the circumstances, he would not be in a position to transfer the lease in respect of the land. The plaintiff expressed his apprehension that in the event of the transfer of the business to the defendants 1 to 3 be brought to the notice of the Church Authorities, the Church Authorities would take immediate eviction proceedings against the plaintiff from the property. So as a device it was agreed to, in between the parties that the plaintiff should be made as a partner in the partnership business just lending his name alone without any participation in the business by the plaintiff and in the profit or loss and in the capital or in the working capital or in the assets or liabilities of the partnership.

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11. In terms thereof it was decided that for the goodwill and taking into consideration of the location of the business and also for the building, the amount of Rs.1,00,000/- was fixed and the plaintiff was paid a sum of Rs.28,000/- before the execution of the partnership deed and the balance amount was agreed to be paid to the plaintiff at the rate of Rs.400/- per month spread over a period of 15 years. It was further agreed that at the end of the period of 15 years, the superstructures shall become the property of the defendants 1 to 3.

12. A mere reading of the terms of the partnership agreement will clearly go to show that except lending the name of the plaintiff in the partnership business, the plaintiff has no interest in the same. If really the plaintiff is a full pledged part, the plaintiff would not have agreed upon for these terms incorporated in the said partnership deed and agreed to and also acted upon. Subsequent to the execution of the partnership, in addition to the said amount of Rs.28,000/-, the plaintiff has further received a sum of Rs.12,000/- totalling Rs.40,000/- that apart the plaintiff had been regularly receiving a sum of Rs.400/- per month.

13. Later, the defendants 1 to 3 came to know that the plaintiff ceased to be the owner of the superstructure and the superstructure had already vested with the Church authorities. Then only the defendants 1 to 3 came to know that the lease granted to the plaintiff for a period of 10 years from 31.12.1951 had expired and also that the plaintiff had agreed to quit and deliver peaceful vacant possession of the premises on the termination of the lease leaving the superstructure free of any cost to the church. The Church authorities, it was further understood that, had issued notice to the plaintiff terminating the tenancy and the clause has worked out surrendering the property to the church authorities in terms of the lease deed. So, the plaintiff himself has lost all interest in the superstructure.

14. In as much as the plaintiff himself lost the ownership of the superstructure and passed it on to the beneficial interest of the church, the plaintiff himself ceased to be the owner of the superstructure and now the property including the superstructure has already vested with the church authorities. In the circumstances, the plaintiff himself is not entitled to get any amount out of the partnership business. However the plaintiff having smelt the fact that the defendants 1 to 3 became aware of the entire events and also the further proceedings taken by the church authorities, hastened to issue the notice dated 14.3.1983 and person prescribed under the Acts and Rules.

15. The defendants 1 to 3 readily agreed to the notice of dissolution sent by the plaintiff and after the notice of dissolution by the plaintiff himself with effect from 28.4.1983, the plaintiff has ceased to have any interest either in the business or in the premises or in the

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leasehold property. Admittedly, there was no capital invested by the plaintiff and also the plaintiff is not entitled to any of the assets or liabilities of the partnership business. Under the agreement dated 3.10.1980, the plaintiff was entitled to receive a sum of Rs.400/- per month and accepted the said beneficial interest to receive a sum of Rs.400/- the plaintiff has nothing to do with the properties or in the business. Having himself forfeited the said rights to receive Rs.400/- after the notice dated 28.4.1983, the plaintiff ceased to have any interest in the business. In addition, the plaintiff has also received a sum of Rs.40,000/- in addition to the amount received at the rate of Rs.400/- per month.

16. The entire business was only in the management of the defendants 1 to 3 and even under the agreement dated 3.10.1980, the plaintiff was not given any right to conduct the business or to share any profit or loss thereof. The plaintiff is not entitled for any accounting since he has no interest in the partnership business except to receive the sum of Rs.400/- in the manner as above. As the plaintiff himself has no right or interest in the management of the business, the complaint of the plaintiff that the defendants have prevented the plaintiff from entering the business premises does not arise. Neither this defendants 1 to 3 nor the fourth defendant have contravened or committed breach of conditions contained under the deed of partnership. The acts of the defendants 1 to 3 not unilateral or malafide in nature but only in consonance and in terms of the partnership agreement dated 3.10.1980.

17. These defendants 1 to 3 have no objection whatsoever to pass a decree only for the dissolution of the partnership but the plaintiff is not entitled to any of the reliefs claimed by the plaintiff in other respects in the plaint.

18. The Written Statement of the fifth defendant states as follows:

The Partnership mentioned in para 4 was entered into by the plaintiff without the consent, knowledge of the fifth defendant much against the express terms of the Lease Agreement.

19. Under clause-5 of the registered Lease Agreement dated 31.12.1951, the plaintiff undertook to deliver possession of the site as well as the building constructed at the end of the term without any claim to compensation. Hence the plaintiff never had any title to the premises to be denied by the defendants Nos.1 to 3, as the title to the building vested with the fifth defendant from the inception of the tenancy.

20. The plaintiff became a tenant under him, in respect of the premises No.230, N.S.C. Bose Road, Madras-1, by virtue of the registered Lease Deed dated 31.12.1951. The plaintiff has no cause of action. There is a stipulation in Clause 5 of the Registered Lease Deed, mentioned above, under which the plaintiff, in consideration of a favourable rent of Rs.35/- per month, undertook to construct the superstructure and deliver

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possession of the site as well as the building constructed at the end of the term without any claim to compensation. Hence, the agreement referred to above has negatived all the ownership rights of the plaintiff in respect of the superstructure. Then subsequently, the said lease was renewed from time to time, with regard to the duration of the lease, and the rate of rent was enhanced periodically. Except those two changes, there was no other alteration in the terms and conditions. Thereafter the plaintiff became systematically irregular in payment of rent. The plaintiff also attempted to sell the premises much against the terms of the said agreement. Hence the fifth defendant issued Advocate's Notice dated 12.4.1984 and terminated the tenancy of the plaintiff and required delivery of vacant possession of the site as well as the building to the fifth defendant. As the plaintiff has not complied with the terms of the said agreement, the fifth defendant took possession of the premises and leased it out to the fourth defendant. Hence the plaintiff has no right whatsoever over the site as well as the superstructure and hence he is not entitled to possession of the premises. The balance of convenience is in favour of the defendant. The defendant has been unnecessarily dragged into court. The plaintiff is not entitled to any injunction or any other relief.

Hence, the suit is liable to be dismissed.

21. Plaintiff was examined as P.W.1 and Ex.A1 to Ex.A.14 were marked on the side of the plaintiff. Third defendant was examined as D.W.1. One Mr.Manikkam was examined as D.W.2. Ex.B1 and Ex.B.2 were marked on the side of the defendants to confront the claim of the plaintiff.

22. The Lower Court after analyzing both oral and documentary evidence in depth found that the plaintiff is entitled only a part claim and accordingly decreed the suit in part. For the remainder relief, the Lower Court dismissed the suit. The present appeal is filed against the finding of the Lower Court in dismissing the part claim.

23. Heard Thiru. S.V.Jayaraman, the learned counsel for appellant and Thiru. S.Subbiah, the learned counsel for respondents 1 to 4.

24. Upon hearing the rival claims, the points for determination are:-

1) Whether the plaintiff is entitled to repossess the suit property as tenant under the fifth defendant?

2) Whether the plaintiff is entitled for any other relief as prayed for?

25. Point No.1:-

The fifth defendant is the owner of the suit property. The plaintiff became a tenant under the fifth defendant in respect of the suit land and put up construction over the same. The plaintiff was doing business from August 1947 onwards. Under clause 5 of the Registered Lease

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Agreement dated 31.12.1951, the plaintiff undertook to deliver possession of the site as well as the building constructed on expiry of lease period without any claim to compensation. Hence, the plaintiff never had any title to the premises.

26. There is a stipulation in clause No.5 of the Registered Lease Deed, under which the plaintiff, in consideration of a favourable rent of Rs.35/- per month, undertook to construct the superstructure and deliver possession of the site as well as the building constructed at the end of the term without any claim to compensation.

27. The Lease Agreement clause stated above has negatived all the ownership rights of the plaintiff in respect of the superstructure. Subsequently, the said lease was renewed from time to time, with regard to the duration of the lease and the rate of rent was enhanced periodically. Except those two changes, there was no other alteration in terms and conditions.

28. Thereafter, the plaintiff defaulted in payment of rent which necessiated the fifth defendant to issue a notice terminating the tenancy, requiring the plaintiff to deliver the vacant possession of the site as well as the building to him.

30. The narration of events is not in dispute. It is also true that the plaintiff and the defendants 1 to 3 entered into a partnership on 3.10.1980 and carrying on business in the supply and sale of medicines and drugs in the name and style of M/s.Gopinaths. The terms were incorporated in the deed of partnership dated 3.10.1980. The said partnership firm commenced from 11.9.1980.

31. As per clause 5 and 8 of the Partnership Deed, defendants 1 to 3 have agreed to pay him a sum of Rs.400/- per month towards the rent payable to the fifth defendant. Thereafter, the defendants 1 to 3 were paying Rs.60/- per month to the plaintiff. However, the plaintiff failed to pay the monthly rent regularly to the fifth defendant. Therefore, the fifth defendant issued notice terminating the tenancy of the plaintiff.

32. The plaintiff has never been in possession of the suit property after entering into a partnership business with the defendants 1 to 3. As per terms of partnership deed, the defendants 1 to 3 are carrying business in the suit premises. Since, the fifth defendant terminated the tenancy of the plaintiff, the defendants 1 to 3 entered into a fresh lease agreement with reference to the suit property with the fifth defendant and carrying on business in their name. It is also proved that the partnership business between the plaintiff and the defendants 1 to 3 was dissolved as per the request made by the plaintiff. As per the lease agreement between the plaintiff and the fifth defendant, the plaintiff has no right at all in respect of the superstructure constructed over the lease land after the expiry of the lease period.

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33. In such view of the fact after termination of tenancy of the plaintiff, the fifth defendant took possession of the suit property and leased out the same to the fourth defendant.

34. The learned counsel appearing for the appellant contended that since the plaintiff being the tenant of the suit building, not delivered vacant possession, subsequently leased out by the fifth defendant in favour of the defendants 1 to 3 is not valid in law. The facts on hand would show that the plaintiff was never in possession of the suit property after entering into a partnership business with defendants 1 to 3. As per the lease agreement, though the plaintiff put up construction over the lease land, he cannot claim right over the same. He has to hand over the vacant site along with the superstructure on the expiry of the lease period.

35. It is not the case of the plaintiff that the lease period continues even now. Lease period expired long before. Lease period extends at the will of the fifth defendant. As on date, there is no landlord and tenant relationship between the fifth defendant and the plaintiff. The defendants 1 to 3 are the tenants under the fifth defendant. The lease agreement subsists between the defendants 1 to 3 and the 5th defendant as on date. In such view of the fact, the plaintiff is not entitled for the possession of the suit property on any ground. The Lower Court has also dealt this point in that line and rightly negatived the claim of the plaintiff and dismissed the suit in this regard. Hence, I do not find any infirmity or impropriety in the findings of the Lower Court in this regard. The findings of the Lower Court is in order and does not require any interference. Hence, this issue is answered against the plaintiff.

36. Point No.2 :

In this case, by consent of both the parties partnership firm of M/s. Gopinaths was dissolved on 28.4.1983. The Lower Court has also passed a money decree for Rs.4,600/- in favour of the plaintiff after giving credit to a sum of Rs.8,000/- as admitted by the plaintiff. The entitlement of the plaintiff for the period from 11.9.1980 to 28.4.1983 has been taken note of and after giving credit to a sum of Rs.8,000/-, money decree for Rs.4,600/- was granted in favour of the plaintiff towards the balance amount.

37. In such view of the position, the appointment of receiver to take charge of the assets of the firm does not arise at all. Admittedly, the assets of the firm does not belong to the plaintiff. Moreover the plaintiff also did not claim any right over the assets of the partnership firm. Admittedly, the defendants 1 to 3 are doing business in the name and style of Vema Medicals in the suit property. The partnership business in the name and style of M/s.Gopinaths between the plaintiff and

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the defendants 1 to 3 was dissolved with effect from 28.4.1983. A new business is being run by the defendants 1 to 3 in the suit property. In such view of the fact, the plaintiff is not entitled for any injunction against the defendants from carrying on business in the suit premises in the name and style of Vema Medicals.

38. Since the fifth defendant taken over the possession of the suit property after the expiry of the lease period from the plaintiff, the plaintiff is not entitled for any damages for use and occupation of the premises at the rate of Rs.1000/- per month for any period.

39. From the narration of events, I am not satisfied that the plaintiff is entitled for any other relief as sought for in the suit. Hence, this point is answered against the plaintiff.

40. In the result, this appeal fails and accordingly dismissed. However, the parties have to bear their respective costs.

tsi

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To
1.The II Judge, Cityu Civil Court, Chennai,
2.The Registrar, City Civil Court, Chenntai.
3.The Section officer, VR Section, High Court, Madras.
+ One cc to Mr. M. Aravinda Subramanian, Advocate SR 17772
+ One cc to Mr. S. Subbiah Advocate SR 18445
HPR (co)
sg 11/4/07

Judgment in
A.S.No.573 of 1991

Dated: 21.03.2007

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